

TAB 110

Thomas Via

October 18, 2005

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SUPERIOR COURT
COMPLEX LITIGATION
DOCKET at TOLLAND

STATE OF CONNECTICUT,
Plaintiff,

vs.

Docket No.
X07 CV-03-0083296-S(CLD)

DEY, INC., ROXANE LABORATORIES, INC.,
WARRICK PHARMACEUTICALS CORP.,
SCHERING-PLOUGH CORP.
AND SCHERING CORPORATION,
Defendants
~~~~~

CONFIDENTIAL

DEPOSITION OF

THOMAS VIA

October 18, 2005  
9:30 a.m.

52 East Gay Street  
Columbus, Ohio

Lori M. Barnes, RPR

Thomas Via

October 18, 2005

16 (Pages 58 to 61)

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| <p style="text-align: right;">58</p> <p>1 assigning it -- between you and Ed of</p> <p>2 assigning it to another product manager?</p> <p>3 <b>A. Yes, on my part.</b></p> <p>4 Q. And what were those conversations</p> <p>5 involving?</p> <p>6 <b>A. I felt that my time was pretty</b></p> <p>7 <b>much taken up by my current responsibilities,</b></p> <p>8 <b>and I wouldn't have time to launch the</b></p> <p>9 <b>product.</b></p> <p>10 Q. And what was Ed's response to your</p> <p>11 concerns?</p> <p>12 <b>A. He felt that I could handle it.</b></p> <p>13 Q. And so you were ultimately assigned</p> <p>14 responsibility for the launch, correct?</p> <p>15 <b>A. Yes.</b></p> <p>16 Q. And did you request assistance with</p> <p>17 respect to the Ipratropium Bromide launch?</p> <p>18 Did you request any assistance from Ed Tupa?</p> <p>19 <b>A. I don't recall.</b></p> <p>20 Q. Did you receive any assistance</p> <p>21 during the launch of Ipratropium Bromide from</p> <p>22 any third parties?</p> <p>23 <b>A. Yes.</b></p> <p>24 Q. From whom did you receive</p> <p>25 assistance?</p> | <p style="text-align: right;">60</p> <p>1 <b>A. The overview of the respiratory</b></p> <p>2 <b>market.</b></p> <p>3 Q. And which Boehringer Ingelheim</p> <p>4 employees provided that assistance to you?</p> <p>5 <b>A. I know there were several. One</b></p> <p>6 <b>that comes to mind is Scott Richardson.</b></p> <p>7 <b>Beyond that, I couldn't name any.</b></p> <p>8 Q. Do you recall what Scott's title</p> <p>9 was during that time period with Boehringer</p> <p>10 Ingelheim?</p> <p>11 <b>A. I believe he was a product</b></p> <p>12 <b>manager.</b></p> <p>13 Q. Did he have familiarity -- Was it</p> <p>14 your understanding that Scott Richardson had</p> <p>15 familiarity with this particular market,</p> <p>16 meaning chronic obstructive pulmonary disease</p> <p>17 or breathing?</p> <p>18 <b>A. Yes.</b></p> <p>19 Q. Is it also your understanding that</p> <p>20 Boehringer Ingelheim had other products for</p> <p>21 that market during that time period?</p> <p>22 <b>A. Yes.</b></p> <p>23 Q. What were the other products that</p> <p>24 Boehringer Ingelheim had?</p> <p>25 <b>A. It was Atrovent MDI as well as</b></p> |
| <p style="text-align: right;">59</p> <p>1 <b>A. Boehringer Ingelheim as well as</b></p> <p>2 <b>Mark Pope.</b></p> <p>3 Q. With respect to the Duraclon</p> <p>4 launch, which occurred in 1996, was that also</p> <p>5 something that Ed Tupa assigned to you?</p> <p>6 <b>A. Yes.</b></p> <p>7 Q. And did you receive any outside</p> <p>8 assistance or third-party assistance during</p> <p>9 that launch?</p> <p>10 <b>A. Yes.</b></p> <p>11 Q. And from whom did you receive such</p> <p>12 assistance?</p> <p>13 <b>A. Our ad agency.</b></p> <p>14 Q. I'm sorry?</p> <p>15 <b>A. The advertising agency.</b></p> <p>16 Q. Do you recall the name of that ad</p> <p>17 agency?</p> <p>18 <b>A. No.</b></p> <p>19 Q. Any other assistance that you</p> <p>20 received for that particular product?</p> <p>21 <b>A. No.</b></p> <p>22 Q. You mentioned Boehringer Ingelheim.</p> <p>23 What kind of assistance did you receive from</p> <p>24 Boehringer Ingelheim for the launch of</p> <p>25 Ipratropium Unit Dose Vials?</p>                                                                                    | <p style="text-align: right;">61</p> <p>1 <b>Atrovent Unit Dose Vial.</b></p> <p>2 Q. Is it fair then to characterize</p> <p>3 Ipratropium Bromide UDV as the generic of</p> <p>4 Atrovent UDV?</p> <p>5 <b>A. Yes.</b></p> <p>6 Q. Atrovent UDV was a Boehringer</p> <p>7 Ingelheim product, correct?</p> <p>8 <b>A. Correct.</b></p> <p>9 Q. What was Atrovent MDI? How does</p> <p>10 Atrovent MDI differ from Atrovent UDV?</p> <p>11 <b>A. Delivery mechanism.</b></p> <p>12 Q. How is Atrovent MDI delivered?</p> <p>13 <b>A. A meter dose inhaler.</b></p> <p>14 Q. And how --</p> <p>15 <b>A. That doesn't require additional</b></p> <p>16 <b>equipment for delivery of the medication.</b></p> <p>17 Q. What about Atrovent UDV, how is</p> <p>18 that delivered?</p> <p>19 <b>A. It's a vial of solution that's</b></p> <p>20 <b>placed into a nebulizer and is inhaled via</b></p> <p>21 <b>the nebulizer.</b></p> <p>22 Q. Ipratropium Bromide UDV would then</p> <p>23 also be delivered using a nebulizer; is that</p> <p>24 correct?</p> <p>25 <b>A. Yes.</b></p>                                                                                |

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17 (Pages 62 to 65)

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| <p style="text-align: right;">62</p> <p>1 Q. Was there any other assistance that</p> <p>2 you received from Boehringer Ingelheim, other</p> <p>3 than -- I know you said there were others --</p> <p>4 <b>A. Correct.</b></p> <p>5 Q. -- including Scott Richardson. Can</p> <p>6 you be more specific as to the type of</p> <p>7 information he provided to you?</p> <p>8 <b>A. More specific than an overview?</b></p> <p>9 <b>No.</b></p> <p>10 Q. When you say "overview," you mean</p> <p>11 an overview of the respiratory market,</p> <p>12 correct?</p> <p>13 <b>A. Overview and history of Atrovent</b></p> <p>14 <b>within that market.</b></p> <p>15 Q. And what's your recollection of the</p> <p>16 history with respect to Atrovent in that</p> <p>17 market?</p> <p>18 <b>A. That there was a segment of the</b></p> <p>19 <b>market that was overlooked on the launch of</b></p> <p>20 <b>Atrovent.</b></p> <p>21 Q. Which segment?</p> <p>22 <b>A. Home healthcare, and they addressed</b></p> <p>23 <b>that.</b></p> <p>24 Q. When you say "overlooked," does</p> <p>25 that mean that it was not -- Atrovent was</p> | <p style="text-align: right;">64</p> <p>1 are you referring to the time relative to the</p> <p>2 Ipratropium Bromide launch when you are</p> <p>3 getting the overview and the historical</p> <p>4 perspective?</p> <p>5 <b>A. Yes.</b></p> <p>6 Q. So did you have meetings, actual</p> <p>7 meetings, where you met with these BI</p> <p>8 employees?</p> <p>9 <b>A. To the best of my knowledge, just</b></p> <p>10 <b>one meeting.</b></p> <p>11 Q. And do you recall approximately</p> <p>12 when that meeting occurred?</p> <p>13 <b>A. It would have been prior to the</b></p> <p>14 <b>launch, so I can't give you an exact date.</b></p> <p>15 Q. Would it be months before the</p> <p>16 launch?</p> <p>17 <b>A. Yeah, probably so.</b></p> <p>18 Q. And do you recall the location of</p> <p>19 that meeting?</p> <p>20 <b>A. Roxane.</b></p> <p>21 Q. And was that in Connecticut then?</p> <p>22 <b>A. No, I'm sorry, it was in Roxane</b></p> <p>23 <b>Laboratories at Columbus, Ohio.</b></p> <p>24 Q. And do you recall who was in</p> <p>25 attendance? I know you said that Scott</p>                                                                                             |
| <p style="text-align: right;">63</p> <p>1 not made available to that market?</p> <p>2 <b>A. It wasn't taken into consideration</b></p> <p>3 <b>when production was planned.</b></p> <p>4 Q. And was there a shortage as a</p> <p>5 result of that?</p> <p>6 <b>A. Yes.</b></p> <p>7 Q. Do you recall how long of a time</p> <p>8 period that shortage continued?</p> <p>9 <b>A. No.</b></p> <p>10 Q. You mentioned it was addressed,</p> <p>11 correct?</p> <p>12 <b>A. Yes.</b></p> <p>13 Q. Do you know how it was addressed?</p> <p>14 <b>A. Just in discussion.</b></p> <p>15 Q. No, I mean how was it addressed</p> <p>16 ultimately to alleviate the shortage, if it</p> <p>17 ever was?</p> <p>18 <b>A. I don't recall.</b></p> <p>19 Q. There were discussions, though,</p> <p>20 apparently about the shortage?</p> <p>21 <b>A. Correct.</b></p> <p>22 Q. Were you involved in those</p> <p>23 discussions?</p> <p>24 <b>A. I believe I was present, yes.</b></p> <p>25 Q. And when you say you were present,</p>                                                                                                              | <p style="text-align: right;">65</p> <p>1 Richardson was there, but were there other</p> <p>2 Roxane employees?</p> <p>3 <b>A. There were other BI employees, and</b></p> <p>4 <b>then I believe Ed Tupa was there. I'm sure</b></p> <p>5 <b>there were other Roxane employees, but I</b></p> <p>6 <b>don't recall who they were.</b></p> <p>7 Q. The other -- You also mentioned</p> <p>8 Mark Pope as a third party that was brought</p> <p>9 in. What was your understanding of the role</p> <p>10 Mark Pope was supposed to play?</p> <p>11 <b>A. He was an outside consultant to</b></p> <p>12 <b>help develop the marketing plan for the</b></p> <p>13 <b>product.</b></p> <p>14 Q. And who brought Mark Pope in?</p> <p>15 <b>A. I can't be certain who brought him</b></p> <p>16 <b>in.</b></p> <p>17 Q. Did Ed Tupa? Do you know if Ed</p> <p>18 Tupa played any role in bringing Mark Pope</p> <p>19 aboard?</p> <p>20 <b>A. I would assume so, but I don't</b></p> <p>21 <b>know that with any degree of certainty.</b></p> <p>22 Q. And so did you work directly with</p> <p>23 Mark Pope during this launch period for</p> <p>24 Ipratropium Bromide UDV?</p> <p>25 <b>A. Yes.</b></p> |

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18 (Pages 66 to 69)

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| <p style="text-align: right;">66</p> <p>1 Q. Was he in the meeting in Columbus,<br/>2 Ohio that we just referred to earlier?</p> <p>3 A. <b>I don't recall. I would assume</b><br/>4 <b>no.</b></p> <p>5 Q. And that meeting in Columbus that<br/>6 we referred to earlier, what was the purpose<br/>7 of that meeting?</p> <p>8 A. <b>To provide an overview of the</b><br/>9 <b>market for Ipratropium Bromide Unit Dose</b><br/>10 <b>Vials.</b></p> <p>11 Q. It wasn't to approve of the<br/>12 marketing plan or anything like that at this<br/>13 point; is that right?</p> <p>14 A. <b>No, at that point there was no</b><br/>15 <b>marketing plan.</b></p> <p>16 Q. And Mark Pope used to work for<br/>17 Dey; is that your understanding?</p> <p>18 A. <b>I believe I recall that.</b></p> <p>19 Q. And do you know what Mark Pope's<br/>20 experience in the respiratory market is based<br/>21 on?</p> <p>22 A. <b>No.</b></p> <p>23 Q. So Mr. Pope was brought in to help<br/>24 develop the marketing plan for Ipratropium<br/>25 Bromide UDV, correct?</p>                                                | <p style="text-align: right;">68</p> <p>1 Q. Did he provide any information<br/>2 about the pricing of competitive products?</p> <p>3 A. <b>Not that I recall.</b></p> <p>4 Q. Did he provide any information<br/>5 about the appropriate pricing for Ipratropium<br/>6 Bromide UDV?</p> <p>7 MR. COVAL: Objection to form.</p> <p>8 A. <b>Not that I recall.</b></p> <p>9 Q. Do you recall if he provided any<br/>10 information about the AWP pricing or the AWP<br/>11 for Ipratropium UDV?</p> <p>12 A. <b>Not that I recall.</b></p> <p>13 Q. So he may have or he may not<br/>14 have, you just don't recall; is that correct?</p> <p>15 MR. COVAL: Objection to form.</p> <p>16 A. <b>Correct.</b></p> <p>17 Q. Any other outside consultants that<br/>18 came in with respect to any of those<br/>19 launches, Ipratropium Bromide and Duraclon?</p> <p>20 A. <b>Not that I recall.</b></p> <p>21 Q. Tom, how long did Mark Pope's<br/>22 involvement last with respect to the launch<br/>23 of Ipratropium Bromide?</p> <p>24 A. <b>I don't know.</b></p> <p>25 Q. Do you know if Mr. Pope has been</p>                                                                 |
| <p style="text-align: right;">67</p> <p>1 A. <b>Correct.</b></p> <p>2 Q. What things did Mr. Pope do in<br/>3 that respect, if you can recall?</p> <p>4 A. <b>I believe he met with customers to</b><br/>5 <b>gather information on the market.</b></p> <p>6 Q. And would those be -- When you say<br/>7 "customers," those would be potential customers<br/>8 for Roxane?</p> <p>9 A. <b>Potential customers, yes.</b></p> <p>10 Q. Those would be potential customers<br/>11 for Ipratropium Bromide?</p> <p>12 A. <b>Correct.</b></p> <p>13 Q. He met with potential customers.<br/>14 What else?</p> <p>15 A. <b>Provided additional information</b><br/>16 <b>regarding different segments of the market,</b><br/>17 <b>specifically home healthcare.</b></p> <p>18 Q. And was it your understanding that<br/>19 Mark Pope's focus was supposed to be on the<br/>20 home healthcare market with respect to his<br/>21 assistance provided to Roxane?</p> <p>22 A. <b>I believe so.</b></p> <p>23 Q. Did Mr. Pope provide information<br/>24 about competitive products?</p> <p>25 A. <b>Not that I recall.</b></p> | <p style="text-align: right;">69</p> <p>1 involved in any other product launches for<br/>2 Roxane?</p> <p>3 A. <b>Not that I'm aware of.</b></p> <p>4 Q. Has he been involved in any<br/>5 product launches for Boehringer Ingelheim?</p> <p>6 A. <b>Not that I'm aware of.</b></p> <p>7 Q. Do you have any understanding as<br/>8 to how anyone at Roxane came across Mark<br/>9 Pope's name to provide this type of<br/>10 assistance?</p> <p>11 A. <b>No.</b></p> <p>12 Q. One of the other job<br/>13 responsibilities that you mentioned during this<br/>14 time period was forecasting sales and<br/>15 production; is that correct?</p> <p>16 A. <b>That's correct.</b></p> <p>17 Q. What specifically did those job<br/>18 responsibilities entail?</p> <p>19 A. <b>For the sales forecast, we looked</b><br/>20 <b>at past performance of the products and tried</b><br/>21 <b>to project where we expected the product to</b><br/>22 <b>grow to, and that was done on an annual</b><br/>23 <b>basis, and we projected out for a period of</b><br/>24 <b>five years. For the forecasting, I believe</b><br/>25 <b>that was done on a quarterly basis, and there</b></p> |